

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Cause No. IP 01- 83 -CR B/F
)
 DAVID HEATH SWANSON,)
)
 Defendant.)

SUPERSEDING INDICTMENT

I.

The grand jury charges:

COUNT 1

BACKGROUND

A. David Heath Swanson (hereafter either David H. Swanson, D. H. Swanson, or Swanson) was at all times relevant to this indictment a corporate official in the grain and agricultural processing industry, or otherwise engaged in business activity concerning that industry. During the period 1986-1993, Swanson was Chief Executive Officer (CEO) of CSY Agri Processing, Inc., which was commonly known as Central Soya Company, based in Fort Wayne, Indiana. In 1994-1995 he operated as a consultant to Archer Daniels Midland (ADM) Company of Decatur, Illinois, and was listed as the Chairman/CEO of Explorer Nutrition Group with a headquarters in New York City. From January 1996 through September 1997 he was the CEO of Countrymark Cooperative, Inc., which had its headquarters at 950 N. Meridian Street, Indianapolis, Indiana. Also, during 1996-1997, Swanson was listed as the President, Secretary

and Treasurer of Project Explorer Holding Corp.; CEO of Project Explorer Corp.; President, Secretary and Treasurer of Project Explorer Mark II Corp., and Project Explorer Mark III Corp.; and CEO of Buckeye Feed Mills, Inc.

B. Since 1997, Swanson has been listed as the Chairman/CEO of Explorer Nutrition Group, Explorer Nutrition & Fiber Group, and as a member/manager of Explorer Nutrition & Fiber Group, LLC. Additionally, he has been listed as the Chairman/CEO/President/Secretary/Treasurer of Greenheat LLC and Explorer Nutrition & Fiber Group Mark IV, LLC., as well as an authorized person on the bank account for Biolan, LLC.

C. The following entities are materially pertinent to this indictment:

1. Archer Daniels Midland Company (ADM) was a conglomerate in the agricultural products and food processing industry with a headquarters in Decatur, Illinois.

2. Premiere Agri Technologies, Inc., was a wholly owned subsidiary of ADM with a headquarters in Decatur, Illinois. Premiere Agri Technologies was the acquiring company of Central Soya's feed business in January 1994.

3. Rogers & Wells was a New York law firm which performed legal services for David H. Swanson and his related companies/entities. Rogers & Wells is now known as Clifford Chance Rogers & Wells with a principal office at 200 Park Avenue, New York, NY.

4. Vickers and Allen, Inc., was an entity formed by David H. Swanson and others with an address of 230 West 41st Street, New York, NY and P.O. Box 10 FDR Station, New York, NY. Vickers and Allen was incorporated in the State of Delaware on February 7, 1994. This was not an operating entity.

5. Realty Factors, Ltd., was a real estate factoring business incorporated in the State of New York on June 9, 1984, by David H. Swanson, and others with a principle office at 163 East 81st Street, New York, NY, or 230 West 41st Street, New York, NY. Realty Factors ended operations in approximately 1990.

6. Project Explorer Corporation, was a Delaware corporation, formed by Rogers & Wells on April 26, 1993, for David H. Swanson and others, but it never operated as a separate entity. It became the acquiring entity for Buckeye Feed Mills, Inc. David H. Swanson was shown as CEO and Carolyn Swanson was shown as assistant secretary with an address of 46 East 70th Street, New York, NY 10021.

7. Project Explorer Mark II Corporation was initially incorporated by Rogers & Wells as Project Explorer Corporation II in the State of Delaware on May 30, 1996. The name was changed by Rogers & Wells to Project Explorer Mark II Corp. on June 14, 1996. This entity listed David H. Swanson as president, secretary and treasurer, with an address of c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021.

8. Project Explorer Mark III Corp. was incorporated by Rogers & Wells for David Swanson in the State of Delaware on December 13, 1996. This corporation listed David H. Swanson as president, secretary and treasurer, with an address of 46 East 70th Street, New York, NY 10021.

9. Project Explorer Holding Corp. was incorporated by David H. Swanson on December 1, 1995 in the State of Delaware. David H. Swanson was shown as president, secretary and treasurer of that corporation, with an address of 46 East 70th Street, New York, NY 10021.

10. Explorer Nutrition Group was an entity used by David H. Swanson; he was listed as Chairman and CEO of that company. Explorer Nutrition Group had an office address of 46 East 70th Street, New York, NY 10021.

11. Explorer Nutrition and Fiber Group was a David H. Swanson entity, which listed its address at 46 East 70th Street, New York, NY 10021. David H. Swanson was listed as chairman and CEO of that organization.

12. Explorer Nutrition and Fiber Group, LLC., was formed by David H. Swanson in the State of Delaware on February 2, 1998, as a limited liability company. This entity had a mailing address of 46 East 70th Street, New York, NY 10021.

13. Associated Venture Management Corporation, formerly known as J.F. Administrative Corp. had an office at 477 Madison Avenue, New York, NY. Associated Venture Management was a venture capital organization which provided financing for start up companies. It's Chairman was Selig A. Zises.

14. Capital Resource Partners, which at relevant times did business as Capital Resource Partners II, LP., Capital Resource Lenders II, LP., and Capital Resource Management had a principal office at 85 Merimac Street, Suite 200, Boston, MA. Capital Resource Partners was a venture capital entity which invested in privately held companies and start up businesses.

15. Malta Clayton was a Mexican feed manufacturer of animal feed, which was owned by Anderson Clayton & Co., S.A. de C.V. Anderson Clayton was owned by Unilever, an American conglomerate in the agricultural products and food business. Malta Clayton was acquired by Project Explorer Mark II Corp. in August 1996.

16. Growmark, Inc., was a regional agricultural cooperative with a principle place of business at 1701 Towanda Avenue, Bloomington, Illinois. Growmark and Countrymark became the joint purchasers of Malta Clayton, through Project Explorer Mark II Corp.

17. Countrymark Cooperative, Inc. (Countrymark), was formed in 1991 when Indiana Farm Bureau Cooperative located in Indianapolis, Indiana, and an Ohio cooperative known as Countrymark, Inc., located in Columbus, Ohio merged to form Countrymark. Countrymark represented independent farm cooperatives in Indiana, Michigan, and Ohio and maintained its headquarters at 950 N. Meridian Street, Indianapolis, Indiana. Countrymark acquired Buckeye Feed Mills, Inc., through a joint agreement with Capital Resource Partners in February 1996, and it acquired Malta Clayton through a joint agreement with Growmark in August 1996.

18. Buckeye Feed Mills, Inc. (Buckeye), was an Ohio corporation with a headquarters at 330 East Schultz Avenue, Dalton, Ohio. Buckeye was acquired by Countrymark and Capital Resource Partners in February 1996.

II.

THE SCHEME

1. In or about 1991, up to and including the date of the indictment, David H. Swanson devised a scheme to obtain funds from his employers and/or companies with which he was associated during mergers, acquisitions, or joint ventures. In mergers, acquisitions, and joint ventures with which Swanson was associated, a variety of fees were connected to the transaction, such as: brokerage fees, title fees, attorneys' fees, accounting fees, consulting and analysis fees,

etc. A merger, acquisition or joint venture closing frequently involved wire transfers, electronic funds transfers and similar banking practices and procedures.

2. It was a part of the scheme that David H. Swanson would, and he did, in an acquisition based on false statements, pretenses and representations, cause an acquiring company to fund an acquisition account with excess funds from which he would divert money to his personal control and use; Swanson would and he did submit to one or more of the parties to an acquisition false and fictitious documents for services purportedly related to the acquisition; and, he would and did cause companies with which he was affiliated to pay personal expenses based on false pretenses and/or statements.

3. It was further a part of and to facilitate the scheme for obtaining money that David H. Swanson would, and he did, use business organizations with which he was affiliated and some of which he controlled as a means to obtain funds through the scheme he had devised. He used the names Premiere Agri Technologies, Inc., Vickers and Allen, Inc., Realty Factors, Ltd., Project Explorer, Inc., Project Explorer Corporation, Project Explorer Mark II Corporation, Project Explorer Mark III Corporation, Project Explorer Corporation II, Project Explorer Holding Corporation, Explorer Nutrition Group, and Explorer Nutrition & Fiber Group, at various times to mask his scheme to obtain funds.

The ADM acquisition of Central Soya's feed businesses

4. In or about 1991 David H. Swanson discussed forming an entity to be called Vickers and Allen that would operate as a consulting firm on various projects where market analyses, business evaluations and other projections would be made. Vickers and Allen did not become an operating entity, and it did not perform any consulting work.

5. In or about 1992 David H. Swanson, who was the Chief Executive Officer (CEO) of CSY Agri Processing, Inc., which was commonly known as Central Soya Company, based in Fort Wayne, Indiana, formed a management group to attempt an acquisition of the animal feed and animal health and nutrition businesses of Central Soya (hereafter the Central Soya) feed businesses. In the course of the attempted acquisition of the Central Soya feed businesses, David H. Swanson engaged the law firm of Rogers and Wells, of New York City to incorporate an entity called Project Explorer Corporation, which was to be used for the acquisition.

6. On July 27, 1993, David H. Swanson resigned his position at Central Soya. While he continued to pursue the management buyout, this effort floundered. Eventually, the management buyout of the Central Soya feed businesses became dormant because the management group could not obtain sufficient funding for the acquisition.

7. In or about November 1993, David H. Swanson presented his proposal to buy the Central Soya feed businesses to ADM. The value of the Central Soya feed businesses at that time was approximately \$152,000,000. ADM through the law firm of Rogers & Wells subsequently made a detailed proposal to Central Soya on December 8, 1993, which was accepted on December 21, 1993.

8. On January 11, 1994, after Central Soya's acceptance of the ADM offer, Swanson, advised ADM of transaction expenses totaling \$1,358,000 which he allegedly incurred

in connection with the acquisition. A part of these transaction expenses consisted of \$278,000 due to Vickers and Allen. At that time Vickers and Allen had no formal existence and the company did not perform any services on the acquisition.

9. On January 28, 1994, ADM, amended the name of its feed corporation to Premiere Agri Technologies, Inc., this entity actually acquired the Central Soya feed businesses on January 28, 1994. At that time, Premiere Agri Technologies, Inc., was a wholly owned subsidiary of ADM.

10. On or about February 3, 1994, the lawfirm of Rogers & Wells received a Vickers and Allen invoice with the address of 230 West 44th Street, New York, NY 10036, in the amount of \$278,000. The stated basis for the invoice was for advisory services performed on a Project Explorer database, a Project Explorer access summary, and a Project Explorer Geographic Company Overlay.

11. On February 7, 1994, David H. Swanson engaged attorney Eric Rosenfeld to incorporate Vickers and Allen as a Delaware corporation. On that same date, February 7, 1994, ADM wire transferred to the lawfirm of Rogers and Wells, \$1,493,558 in support of the “CSY feed acquisition expenses,” a payment which was to cover expenses incurred by Swanson.

12. On February 23, 1994, Carolyn Breitingner (who later became Mrs. David H. Swanson), as President, and Hertha Meyer (an employee of Swanson), as Secretary, signed a general corporate resolution regarding Vickers and Allen at David Swanson’s request. This was done to bring some legitimacy to its existence.

13. On February 24, 1994, the lawfirm of Rogers and Wells wire transferred \$278,000 to the Sterling National Bank and Trust Company of New York City, for credit to Account No.

314-319-700 which was in the name of Vickers and Allen, Inc., P.O. Box 10, FDR Station, New York, NY 10050.

14. On August 23, 1994, Realty Factors, Ltd., at 230 West 41th Street, New York, NY 10036 issued check No. 1036 on account No. 03-143-154-01 at Sterling National Bank and Trust Company, in the amount of \$437.21 to pay the fee for the incorporation of Vickers and Allen. Realty Factors had no connection to Vickers and Allen.

The Countrymark Cooperative, Inc., acquisition of Buckeye Feed Mills, Inc.

15. On January 17, 1995, David H. Swanson using the title President of Project Explorer, Inc., presented an acquisition proposal to Buckeye officials, valued at \$15,000,000.

16. On March 27, 1995, a Buckeye acquisition report was completed at David H. Swanson's request and in the period March-August, 1995, pre-acquisition work was performed by Tom Seaman and Hertha Meyer, each of whom was working for David H. Swanson.

17. On June 7, 1995, venture capitalist Selig A. Zises, doing business as J.F. Administrative Corp., 477 Madison Avenue, 14th Floor, New York, NY 10022, agreed to a \$2,000,000 equity investment in Project Explorer, Inc., in connection with the proposed acquisition of Buckeye.

18. During August 1995, at the request of David H. Swanson, Schroder Wertheim & Co., Inc., an investment banking firm based in New York City, completed work on an offering memorandum of a private placement of Buckeye for Explorer Nutrition Group.

19. On August 10, 1995, J.F. Administrative Corp. made an initial investment through a check in the amount of \$40,000 to Explorer Nutrition Group, which David H. Swanson

deposited into account No. 71-839-380-5, at Fort Wayne National Bank, Fort Wayne, Indiana, in the name of David H. Swanson, c/o Premiere Agri Technologies, Inc., 46 East 70th Street, New York, NY 10021.

20. On August 17, 1995, David H. Swanson, as president of Project Explorer Corporation signed a stock purchase agreement for all of the outstanding capital stock of Buckeye Feed Mills, Inc.

21. On September 27, 1995, J.F. Administrative Corp. made another investment in the proposed Buckeye acquisition in the amount of \$124,000 through a check payable to Explorer Nutrition Group, rather than Project Explorer Corporation which David H. Swanson deposited into account No. 71-839-380-5 at Fort Wayne National Bank, Fort Wayne, Indiana, in the name of David H. Swanson, c/o Premiere Agri Technologies, Inc., 46 East 70th Street, New York, NY 10021.

22. On September 27, 1995, David H. Swanson, as president of Project Explorer Corporation, and guarantor in the agreement, signed an amendment to the August 17, 1995, Buckeye stock purchase agreement, which in summary extended the initial closing 60 days to permit Project Explorer Corporation to obtain the balance of debt and equity financing which it had been attempting to secure. Pursuant to this agreement, if the closing did not occur, Swanson was personally obligated to pay \$100,000 to the shareholders of Buckeye.

23. On November 2, 1995, while the proposed Buckeye acquisition was pending, David H. Swanson accepted the position of CEO with Countrymark Cooperative, Inc., 950 N. Meridian Street, Indianapolis, Indiana.

24. On November 8, 1995, J.F. Administrative Corp. made an additional investment in the Buckeye acquisition in the amount of \$118,000 through a check made payable to Explorer Nutrition Group, which David H. Swanson deposited into account No. 71-839-380-5, at Fort Wayne National Bank, Fort Wayne, Indiana, in the name of David H. Swanson, c/o Premiere Agri Technologies, Inc., 46 East 70th Street, New York, NY 10021.

25. During December 1995, as he was preparing to assume his position at Countrymark, David H. Swanson, in discussions with a Countrymark board member, was told that his attempts to purchase Buckeye would put him in conflict with his employment at Countrymark.

26. On December 7, 1995, Selig A. Zises, who was then doing business as Associated Venture Management Corp., which was formerly J.F. Administrative Corp., decided to terminate his involvement in the Buckeye acquisition and requested a return of his initial capital investment in the amount of \$282,000.

27. On December 12, 1995, David H. Swanson, who was preparing to assume the position of CEO of Countrymark Cooperative, Inc., gave an address at the annual Countrymark membership meeting in Fort Wayne, Indiana, during which he gave his views on the future of the agri business and the importance of the development of partnerships in the agri business. Swanson was promoting mergers and acquisitions and set the stage for a Countrymark take over of his proposed Buckeye acquisition.

28. On December 13, 1995, a scheduled closing on the Project Explorer Corporation acquisition of Buckeye was terminated because David H. Swanson had not obtained sufficient equity funding for the project. Swanson did not attend the closing but others met for the closing.

29. The Buckeye project was kept alive and on December 18, 1995, Schroder Wertheim & Co., Inc., prepared an update to the Buckeye Feed Mills, Inc., offering memorandum of August 1995, at Swanson's request.

30. On December 27, 1995, Capitol Resource Lenders, Boston, Massachusetts, wire transferred an initial investment of \$50,000 to a Buckeye account at Society National Bank in Cleveland, Ohio, as an escrow payment on behalf of Project Explorer Corporation, for the Buckeye acquisition.

31. On January 1, 1996, David H. Swanson officially assumed the position of CEO of Countrymark Cooperative, Inc.

32. On January 3, 1996, in Indianapolis, Indiana, Swanson presented a proposal for the acquisition of Buckeye to the Countrymark board. He told the board that he had contracted through Explorer Nutrition Group to buy Buckeye, but since he was now the CEO of Countrymark this might be viewed as a conflict of interest and to avoid that conflict of interest, he offered and recommended the Buckeye acquisition to Countrymark.

33. On January 4, 1996, there was further discussion of the Buckeye acquisition with the Countrymark board. The board was told that Explorer Nutrition Group (a Swanson entity) would be completely out of the deal and Countrymark would buy the Buckeye business directly from Buckeye shareholders. Countrymark would co-own Buckeye with venture capital investor Capitol Resource Partners. During the January 4, 1996, board meeting, the Countrymark board approved the purchase of Buckeye directly from its shareholders. Countrymark's share of the purchase was to be \$4,000,000.

34. On February 2, 1996, the lawfirm of Rogers & Wells on Swanson's behalf advised Selig A. Zises that the three investments made on August 10, September 27, and November 8, 1995, totaling \$282,000, would be refunded at the Buckeye closing.

35. On that same day, February 2, 1996, the Countrymark board, which had already approved a direct purchase of Buckeye stock, adopted a resolution agreeing to invest \$4,000,000 in the Swanson entity Project Explorer Corporation, which in turn would acquire Buckeye. Countrymark was to control approximately 90% of the stock of Project Explorer Corporation.

36. On February 27, 1996, the Buckeye closing was held. The closing resulted in the payment of a fee of \$284,000 to Associated Capitol. At that point Associated Capital was not an investor in the project; \$282,000 of this sum was a reimbursement to Selig A. Zises who had given Swanson a preliminary investment, which Swanson had deposited into a personal account at Fort Wayne National Bank. The parties were not told that the payment to Associated was for the payment of a Swanson personal debt.

37. After Countrymark's acquisition of Buckeye through Project Explorer Corporation, Buckeye retained its management in Dalton, Ohio, which reported to the Buckeye Feed Mills board which reported to the Project Explorer Corporation board. David H. Swanson was a member of each board and was CEO of Buckeye. Buckeye also maintained a separate bank account at Society National Bank in Cleveland, Ohio.

38. In early March, 1996, when Buckeye was posting the closing fees to its books, as a part of that accounting, David H. Swanson provided a document titled "Estimated Associated Capitol Fee Breakdown" which included a \$73,000 charge by Vickers and Allen for an industry review by George Vickers and other fees which totaled \$284,000.

39. On or about March 26, 1996, David H. Swanson, who was CEO of Countrymark, President and Secretary of Project Explorer Corporation, and CEO of Buckeye directed Buckeye to pay him an expense reimbursement of \$15,000 regarding the Buckeye acquisition. On that same day, March 26, 1996, Buckeye wire transferred \$15,000 to NBD Indianapolis, for credit to NBD Fort Wayne account No. 715 020 190 925, an account in the name of David H. Swanson, 46 East 70th Street, New York, NY 10021.

40. On April 2, 1996, Swanson as CEO of Countrymark, President and Secretary of Project Explorer Corporation, and CEO of Buckeye directed Buckeye to pay him an expense reimbursement of \$59,000 regarding the Buckeye acquisition. On that same day, April 2, 1996, Buckeye wire transferred \$59,000 to NBD Indianapolis for credit to NBD Fort Wayne account No. 715-020-190-025, an account in the name of David H. Swanson, 46 East 70th Street, New York, NY 10021.

41. On May 7, 1996, Swanson, as CEO of Countrymark, President and Secretary of Project Explorer Corporation, and CEO of Buckeye directed Buckeye to pay him an expense reimbursement of \$80,392 regarding the Buckeye acquisition. On that same day, May 7, 1996, Buckeye wire transferred \$80,392 to NBD Indianapolis for credit to NBD Fort Wayne account No. 715-020-190-025, an account in the name of David H. Swanson, 46 East 70th Street, New York, NY 10021.

42. On or about May 28, 1996, Swanson made an additional request for an expense reimbursement connected to the Buckeye acquisition. When Buckeye requested supporting documentation, Swanson provided on Countrymark stationary a "Summary listing of reimbursable expenses to Explorer Nutrition Group/Project Explorer Corporation reference the

acquisition of Buckeye Feed Mills, Inc.” Based on this supporting documentation provided by Swanson, Buckeye wire transferred \$93,000 to NBD Indianapolis for credit to NBD Fort Wayne account No. 715 202 190 925, an account in the name of David H. Swanson, 46 East 70th Street, New York, NY 10021.

43. In or about the period June-July 1996, Swanson approached a Countrymark board member regarding the possibility of Countrymark making a personal loan to him in the amount of \$500,000 for use by his son in building a home. Swanson was told by the board member that such a loan would not be possible.

44. During the summer of 1996, David H. Swanson instructed Buckeye to put Christine Zuinghedau on it's payroll as an employee who was to reside and work in the New York area on Buckeye projects. At the time she was an attendant at the Swanson Farm in Millbrook, NY.

45. On or about July 15, 1996, Buckeye received an application for employment for the position of assistant from Christine Zuinghedau, P.O. Box 684, Millbrook, NY 12545, telephone No. 914-868-7687. The application was for immediate, full-time employment. Zuinghedau's employment experience was listed as "barn manager". Then from July 14, 1996, through March 31, 1997, Buckeye paid her as an employee.

46. Eventually Swanson was questioned about Zuinghedau's role with Buckeye, and he stated that she was assisting Buckeye's sales effort in New York.

47. During November 1996, when he was questioned further at a Buckeye board meeting, Swanson stated that Zuinghedau was working on a "warmblood project" for Countrymark. After these inquiries by the Buckeye board, Swanson instructed Buckeye to create

a bill for Zuinghedau's employee expenses and send them to Countrymark. Countrymark at Swanson's direction, reimbursed Buckeye for amounts paid to Christine Zuinghedau.

The Countrymark Cooperative, Inc., acquisition of Malta Clayton

48. In or about 1992, David H. Swanson when he was the Chief Executive Officer of CSY Agri Processing, Inc., (Central Soya) became aware that Malta Clayton, a Mexican feed business owned by Unilever, was for sale. In July 1992, Central Soya considered buying Malta Clayton which at that time was valued at \$12,000,000 to \$15,000,000. Central Soya ultimately decided in August 1992 not to buy Malta Clayton. Malta Clayton remained a viable acquisition target in 1996.

49. At some point after the February 1996 Countrymark acquisition of Buckeye, Swanson approached the Countrymark board about the purchase of Malta Clayton. Even though the Countrymark board had not approved the acquisition, on May 15, 1996, Swanson signed a purchase agreement as President and CEO of Project Explorer Mark II Corp., agreeing to purchase Malta Clayton for \$31,000,000 with a projected closing date of May 22, 1996. At that point, Project Explorer Mark II Corp. had no legal existence.

50. On or about May 30, 1996, Swanson as CEO and President of Countrymark, also signed a guaranty dated May 15, 1996, wherein Countrymark guaranteed the obligations of Project Explorer Mark II Corp. as stated in the May 15, 1996, purchase agreement between Project Explorer Mark II Corp. and Malta Clayton.

51. On that same date, May 30, 1996, an entity named Project Explorer Corporation II was incorporated by the lawfirm Rogers & Wells for Swanson.

52. On June 14, 1996, the lawfirm of Rogers & Wells changed the name of Project Explorer Corporation II to Project Explorer Mark II Corporation. Then on that same day, David H. Swanson was shown on corporate documents as having been elected as the sole director of the corporation while the lawfirm of Rogers & Wells resigned as sole incorporator of Project Explorer Mark II Corp. Finally, on June 14, 1996, David H. Swanson was shown as having been elected to the positions President, Secretary, and Treasurer of Project Explorer Mark II Corp. by unanimous written consent in lieu of the first meeting of the board of directors with Swanson sitting as Director.

53. On June 5, 1996, at the regular monthly meeting of Countrymark's board of directors, in Indianapolis, Indiana, David H. Swanson presented and recommended to the board a proposal to buy the Malta Clayton feed business for \$33,000,000 as part of a consortium. Countrymark's share of the purchase was to be \$5,000,000. The Countrymark board accepted Swanson's proposal and recommendation.

54. At the next Countrymark board meeting on July 9, 1996, Swanson requested that the board invest an additional \$5,000,000, in the consortium, bringing Countrymark's total investment in the Malta Clayton acquisition to \$10,000,000.

55. On July 23, 1996, David H. Swanson, as a sole director of Project Explorer Mark II Corp., took action approving, ratifying, and adopting the purchase agreement which he as President and CEO of Project Explorer Mark II Corp. had signed on May 15, 1996, to buy Malta Clayton.

56. On July 25, 1996, Swanson, as President of Project Explorer Mark II Corp. agreed to place the Malta Clayton closing documents in escrow pending the payment of the \$31,000,000 purchase price plus interest of 6% per annum from July 25, 1996, to the actual closing.

57. On July 25, 1996, David H. Swanson, as President, Secretary, and Treasurer of Project Explorer Mark II Corp. established a business checking account No. 42-904-024 at Bankers Trust Co., in New York City, in the name of Project Explorer Mark II Corp., c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. He was the only authorized person on the account signature card.

58. On August 1, 1996, David H. Swanson as sole Director of Project Explorer Mark II Corp. approved an agreement wherein Countrymark and Growmark were to purchase stock in Project Explorer Mark II Corp. with each to pay \$10,000,000. Then, on that same date, he authorized and directed Project Explorer Mark II Corp. to issue a bridge note in the amount of \$15,000,000 to Countrymark, which expanded the acquisition costs for Malta Clayton to \$35,000,000. Malta Clayton was actually acquired for \$31,000,000, plus interest.

59. On August 5, 1996, Swanson as President of Project Explorer Mark II Corp. and President of Countrymark, executed the \$15,000,000 bridge note, which was a demand note running from Project Explorer Mark II Corp. to Countrymark.

60. On August 5, 1996, Swanson signed on behalf of Project Explorer Mark II Corp. and Countrymark Cooperative, Inc., a shareholders' agreement between Project Explorer Mark II Corp., Countrymark and Growmark, which permitted Countrymark and Growmark to acquire 500 shares each of Project Explorer Mark II Corp. With the financing and stock purchase

agreements completed, David H. Swanson was able to complete the closing on the Malta Clayton deal.

61. After the Malta Clayton acquisition, Countrymark notified Swanson that documents to support the Malta Clayton acquisition expenditures were needed to “book” and classify the expenditures.

62. During October 1996, David H. Swanson engaged attorney Eric Rosenfeld to gather and prepare supporting documentation which according to Swanson would support previous agreements and actions undertaken and closing disbursements made during the acquisition of Malta Clayton.

63. On or about November 11, 1996, David H. Swanson provided a Rosenfeld prepared documentation booklet to Countrymark in support of the Malta Clayton acquisition expenditures. The booklet contained invoices from Vickers and Allen, Inc., and others. Vickers and Allen did not perform any work on the Malta Clayton acquisition.

The sale of Buckeye stock

64. In accordance with the February 1996 acquisition agreement for Buckeye Feed Mills, Countrymark was required to reduce its interest in Project Explorer Corporation to below 50% by the end of the first year after acquisition. This was discussed at Project Explorer Corporation board meetings and Swanson as Project Explorer Corp. President and CEO was to look for other agricultural cooperatives as potential investors in Project Explorer Corporation.

As a part of the partial sale of Project Explorer Corporation, Countrymark was to be paid a facilitation fee of \$400,000.

65. On December 13, 1996, the law firm of Rogers & Wells incorporated Project Explorer Mark III Corp., in the State of Delaware, for Swanson .

66. On April 23, 1997, David H. Swanson as President, Secretary and Treasurer of Project Explorer Mark III Corp., established business checking account No. 42-904-876 at Bankers Trust Company, New York City. He was the only person authorized on the account.

67. On May 14, 1997, David H. Swanson, as CEO of Countrymark executed a stock purchase agreement between Countrymark and Agway Holdings, Inc., Growmark, Inc., and Land-O-Lakes, Inc., for Countrymark's partial sale of Project Explorer Corp. This agreement generated a \$400,000 facilitation fee to Countrymark and on that same date, Agway, Growmark and Land-O-Lakes, collectively paid Countrymark \$400,000.

68. On May 15, 1997, Swanson caused Countrymark to wire transfer \$400,000 to the Project Explorer Mark III Corp., account No. 42-904-876 at Bankers Trust Co., New York City.

69. In late June 1997, David H. Swanson indicated to a Countrymark board member that the \$400,000 which Countrymark had received as a facilitation fee in connection with the partial sale of the Buckeye to Agway, Growmark and Land-O-Lakes had been used for expenses on a new project, being run from New York City.

70. On June 27, 1997, when Countrymark attempted to retrieve the \$400,000 facilitation fee from the Project Explorer Mark III Corp. at Bankers Trust Co. Countrymark learned that only \$300,000 remained in the account and that David H. Swanson was the only authorized official on the account.

71. On July 1, 1997, Swanson advised the Countrymark board that Agway, Growmark and Land-O-Lakes had purchased a 20% interest in Buckeye and that this purchase had resulted in a \$400,000 facilitation fee to Countrymark. Swanson further stated to the board that the facilitation fee had been applied to a Buckeye project and expenses at Project Explorer Mark III Corp. and that these activities would be coordinated in New York City.

72. After being questioned about the account at Bankers Trust Co., on July 8, 1997, Swanson instructed Bankers Trust Co. to add the Countrymark treasurer to the Project Explorer Mark III Corp. account No. 42-904-876.

73. On July 30, 1997, David H. Swanson met with the treasurer of Countrymark to review expense reimbursement checks totaling \$168,557.42. During this meeting Swanson stated that he had already received \$113,000 in connection with these expenses and directed the treasurer to transfer an additional \$55,000 to his account No. 71-839-380-5 at the Fort Wayne National Bank.

III.

Parts I and II of the Indictment are incorporated by reference and are realleged.

On or about August 5, 1996, through conduct, events, and activities which began and/or continued in the Southern District of Indiana, David H. Swanson, for the purpose of executing the referenced scheme and artifice to defraud Countrymark and Growmark, and attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is, a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the

wire transfer of funds from Countrymark's bank account at Huntington National Bank \$25,000,000 to Bankers Trust Company, New York, NY, account No. 42-904-024, an account with D. H. Swanson listed as President and the only authorized person on the account, c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. On that same day (August 5, 1996) Growmark, Inc., Bloomington, Illinois, transferred \$10,000,000 to the Bankers Trust Co. account No. 42-904-024.

On August 5, 1996, David H. Swanson, as President of Project Explorer Mark II Corp. instructed Bankers Trust Company to wire transfer \$31,056,833.33 from the Project Explorer Mark II Corp. account to Citibank, N.A., New York City, for credit to the account of Anderson Clayton & Co., S.A. de C.V., for the purchase of Malta Clayton, a Mexican feed business, and \$2,000,000 to Bankers Trust Co. account No. 42-902-141, an account in the name of Project Explorer Corp., which listed D.H. Swanson as CEO and Carolyn Swanson as Assistant Secretary.

The above stated offense was in violation of Title 18, U.S.C. § 1343.

COUNTS 2 - 8

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about August 5, 1996, through conduct, events, and activities which began and/or continued in the Southern District of Indiana, David H. Swanson, for the purpose of executing the referenced scheme and artifice to defraud Countrymark and Growmark, and attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is, a computer transmission from Countrymark Cooperative, Inc., Indianapolis to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of funds from Countrymark's bank account at Huntington National Bank \$25,000,000 to Bankers Trust Company, New York, NY, account No. 42-904-024, an account with D. H. Swanson listed as President and the only authorized person on the account, c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. On that same day (August 5, 1996) Growmark, Inc., Bloomington, Illinois, transferred \$10,000,000 to the Bankers Trust Co. account No. 42-904-024.

Through the referenced scheme which consisted in part of conduct, events, and activity that began in and/or continued in the Southern District of Indiana, David H. Swanson received money of the value of \$5,000 or more, which had crossed a state boundary after being unlawfully converted or taken on or about the dates and in the instances and amounts set out below:

<u>COUNT</u>	<u>DATE</u>	<u>TRANSACTION</u>	<u>AMOUNT</u>
2.	8-7-96	Wire transfer from Project Explorer Corp. # 42-902-141 to Bank of Millbrook account No. 3003829	\$75,000
3.	8-13-96	Wire transfer from Project Explorer Corp. #42-902-141 to Sterling National Bank, Realty Factors, Ltd. account No. 314-315-401	\$400,000
4.	8-15-96	Wire transfer from Project Explorer Corp. #42-902-141 to Sterling National Bank, Realty Factors, Ltd. account No. 314-315-401	\$800,000
5.	8-28-96	Wire transfer from Project Explorer Mark II Corp. #42-904-024 to Buckeye Feed Mills, Inc. account No. 00200-02030	\$60,000
6.	8-30-96	Wire transfer from Project Explorer Corp. # 42-902-141 to Chemical Bank account No. 069-294-038, Linda Goldstein	\$35,000
7.	9-19-96	Wire transfer from Project Explorer Corp. # 42-904-141 to Sterling National Bank, Realty Factors, Ltd. account No. 314-315-401	\$400,000
8.	11-5-96	Wire transfer from Project Explorer Mark II Corp. # 42-904-024 to Sterling National Bank, Realty Factors, Ltd. account No. 314-315-401	\$280,000

These offenses were in violation of Title 18, U.S.C. § 2315.

COUNT 9

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about May 15, 1997, through conduct, events, and activity which began and/or continued in the Southern District of Indiana, David H. Swanson for the purpose of executing the referenced scheme and artifice to defraud Countrymark, and in attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of \$400,000 from Countrymark's bank account at Huntington National Bank to the Bankers Trust Company, New York City, account No. 42-904-876 in the name of Project Explorer Mark III Corp. which listed David H. Swanson as President, Secretary and Treasurer, an account on which he was the only authorized person on the account, in violation of Title 18, U.S.C. § 1343.

COUNTS 10 THROUGH 13

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about May 15, 1997, through conduct, events, and activity which began and/or continued in the Southern District of Indiana, David H. Swanson for the purpose of executing the referenced scheme and artifice to defraud Countrymark, and in attempting to do so, did

knowingly cause the transmission in interstate commerce by means of a wire communication, that is a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of \$400,000 from Countrymark's bank account at Huntington National Bank to the Bankers Trust Company, New York City, account No. 42-904-876 in the name of Project Explorer Mark III Corp.

Through the referenced scheme which consisted in part of conduct, events and activity that began in and/or was continued in the Southern District of Indiana, David H. Swanson received money of a value of \$5,000 or more, which had crossed a state boundary after being unlawfully converted or taken on or about the dates and in the instances and amounts set out below:

<u>COUNT</u>	<u>DATE</u>	<u>TRANSACTION</u>	<u>AMOUNT</u>
10.	5-30-97	Wire transfer from Project Explorer Mark III Corp. # 42-904-876 to Sterling National Bank, Realty Factors, Ltd. account No. 314-315-401	\$100,000
11.	7-2-97	Wire transfer from Project Explorer Mark III Corp. #42-904-876 to the Bank of Millbrook account No. 3003829	\$38,500
12.	7-29-97	Wire transfer from Project Explorer Mark III Corp. # 42-904-876 to the Bank of Millbrook account No. 3003829	\$75,000
13.	7-31-97	Wire transfer from Project Explorer Mark III Corp. # 42-904-876 to the Fort Wayne National Bank account No. 71-839-380-5	\$55,557.42

These offenses were in violation of Title 18, U.S.C. § 2315.

COUNT 14

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about August 5, 1996, through conduct, events, and activities which began and/or continued in the Southern District of Indiana, David H. Swanson, for the purpose of executing the referenced scheme and artifice to defraud, and attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is, a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of funds in the amount of \$25,000,000 from Countrymark's bank account at Huntington National Bank to Bankers Trust Company, New York, NY, account No. 42-904-024, an account with D. H. Swanson listed as President and the only authorized person on the account, c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. On that same day (August 5, 1996) Growmark, Inc., Bloomington, Illinois, wire transferred \$10,000,000 to the Bankers Trust Co. account No. 42-904-024.

On August 5, 1996, David H. Swanson, as President of Project Explorer Mark II Corp. instructed Bankers Trust Company to transfer \$2,000,000 from account No. 42-904-024 to Bankers Trust Co. account 42-902-141, an account in the name of Project Explorer Corp., which listed D. H. Swanson as CEO and Carolyn Swanson as Assistant Secretary.

On August 13, 1996, David H. Swanson caused Bankers Trust Co. to wire transfer \$400,000 from the Project Explorer Corp. account to Sterling National Bank, Realty Factors, Ltd., account No. 314-315-401.

On or about August 14, 1996, through conduct, events and activity which began and/or continued in the Southern District of Indiana, defendant David H. Swanson, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, that is a transfer of funds in the amount of \$390,000, such property having been derived from a specified unlawful activity, that is a scheme to defraud by wire which is set out above contrary to Title 18 U.S.C. § 1343.

In violation of Title 18 United States Code, Sections 1957 and 2.

COUNT 15

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about August 5, 1996, through conduct, events, and activities which began and/or continued in the Southern District of Indiana, David H. Swanson, for the purpose of executing the referenced scheme and artifice to defraud, and attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is, a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of funds in the amount of \$25,000,000 from Countrymark's bank account at Huntington National Bank to Bankers Trust

Company, New York, NY, account No. 42-904-024, an account with D. H. Swanson listed as President and the only authorized person on the account, c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. On that same day (August 5, 1996) Growmark, Inc., Bloomington, Illinois, transferred \$10,000,000 to the Bankers Trust Co. account No. 42-904-024.

On August 5, 1996, David H. Swanson, as President of Project Explorer Mark II Corp. instructed Bankers Trust Company to transfer \$2,000,000 from account No. 42-904-024 to Bankers Trust Co. account 42-902-141, an account in the name of Project Explorer Corp., which listed D. H. Swanson as CEO and Carolyn Swanson as Assistant Secretary.

On August 15, 1996, David H. Swanson caused Bankers Trust Co. to wire transfer \$800,000 from the Project Explorer Corp. account to Sterling National Bank, Realty Factors, Ltd., account No. 314-315-401.

On or about August 16, 1996, through conduct, events and activity which began and/or continued in the Southern District of Indiana, defendant David H. Swanson, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, that is a transfer of funds in the amount of \$790,000, such property having been derived from a specified unlawful activity, that is a scheme to defraud by wire which is set out above contrary to Title 18 U.S.C. § 1343.

In violation of Title 18 United States Code, Sections 1957 and 2.

COUNT 16

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about August 5, 1996, through conduct, events, and activities which began and/or continued in the Southern District of Indiana, David H. Swanson, for the purpose of executing the referenced scheme and artifice to defraud, and attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is, a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of funds in the amount of \$25,000,000 from Countrymark's bank account at Huntington National Bank to Bankers Trust Company, New York, NY, account No. 42-904-024, an account with D. H. Swanson listed as President and the only authorized person on the account, c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. On that same day (August 5, 1996) Growmark, Inc., Bloomington, Illinois, transferred \$10,000,000 to the Bankers Trust Co. account No. 42-904-024.

On August 5, 1996, David H. Swanson, as President of Project Explorer Mark II Corp. instructed Bankers Trust Company to transfer \$2,000,000 from account No. 42-904-024 to Bankers Trust Co. account 42-902-141, an account in the name of Project Explorer Corp., which listed D. H. Swanson as CEO and Carolyn Swanson as Assistant Secretary.

On September 19, 1996, David H. Swanson caused Bankers Trust Co. to wire transfer \$400,000 from the Project Explorer Corp. account to Sterling National Bank, Realty Factors, Ltd., account No. 314-315-401.

On or about September 24, 1996, through conduct, events and activity which began and/or continued in the Southern District of Indiana, defendant David H. Swanson, did

knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, that is a transfer of funds in the amount of \$400,000, such property having been derived from a specified unlawful activity, that is a scheme to defraud by wire which is set out above contrary to Title 18 U.S.C. § 1343.

In violation of Title 18 United States Code, Sections 1957 and 2.

COUNT 17

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about August 5, 1996, through conduct, events, and activities which began and/or continued in the Southern District of Indiana, David H. Swanson, for the purpose of executing the referenced scheme and artifice to defraud, and attempting to do so, did knowingly cause the transmission in interstate commerce by means of a wire communication, that is, a computer transmission from Countrymark Cooperative, Inc., Indianapolis, Indiana, to the Huntington National Bank, Columbus, Ohio, instructions for the wire transfer of funds in the amount of \$25,000,000 from Countrymark's bank account at Huntington National Bank to Bankers Trust Company, New York, NY, account No. 42-904-024, an account with D. H. Swanson listed as President and the only authorized person on the account, c/o Explorer Nutrition Group, 46 East 70th Street, New York, NY 10021. On that same day (August 5, 1996) Growmark, Inc., Bloomington, Illinois, transferred \$10,000,000 to the Bankers Trust Co. account No. 42-904-024.

On November 5, 1996, David H. Swanson caused Bankers Trust Co. to wire transfer \$280,000 from the Project Explorer Mark II Corp. account to Sterling National Bank, Realty Factors, Ltd., account No. 314-315-401.

On or about November 6, 1996, through conduct, events and activity which began and/or continued in the Southern District of Indiana, defendant David H. Swanson, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, that is a transfer of funds in the amount of \$300,000, such property having been derived from a specified unlawful activity, that is a scheme to defraud by wire which is set out above contrary to Title 18 U.S.C. § 1343.

In violation of Title 18 United States Code, Sections 1957 and 2.

COUNT 18

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about the 15th day of October 1997, in the Southern District of Indiana and elsewhere, David H. Swanson, who maintained residences in Amenia, New York, and Indianapolis, Indiana, who was during calendar year 1996 married and who was employed in Indianapolis, Indiana, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for calendar year 1996, by furnishing false documents and information to his employer in Indianapolis, Indiana and committing other affirmative acts of evasion by filing and causing to be filed with the Internal

Revenue Service a false and fraudulent U.S. Individual Income Tax Return, Form 1040, in the name of himself and his spouse, wherein it stated that their joint taxable income for the calendar year 1996 was the sum of \$201,272 and that the amount of tax due and owing thereon was the sum of \$72,863, whereas, as he then and there well knew and believed their joint taxable income for the calendar year 1996 was the sum of \$2,385,853, more or less, upon which said joint taxable income there was owing to the United States of America an income tax of \$979,286, more or less.

The above offense was in violation of Title 26, United States Code, Section 7201.

COUNT 19

The grand jury charges:

Parts I and II of Count 1 of the Indictment are incorporated by reference and are realleged.

On or about the 15th day of October 1998, in the Southern District of Indiana and elsewhere, David H. Swanson, who maintained residences in Amenia, New York, and Indianapolis, Indiana, who was during calendar year 1997 married and who was employed in Indianapolis, Indiana, did willfully attempt to evade and defeat a large part of the income tax due and owing by him and his spouse to the United States of America for calendar year 1997, by furnishing false information to his employer in Indianapolis, Indiana and committing other affirmative acts of evasion by filing and causing to be filed with the Internal Revenue Service a false and fraudulent U.S. Individual Income Tax Return, Form 1040, in the name of himself and his spouse, wherein it stated that their joint taxable income for the calendar year 1997 was the

sum of \$495,234 and that the amount of tax due and owing thereon was the sum of \$171,950, whereas, as he then and there well knew and believed their joint taxable income for the calendar year 1997 was the sum of \$630,195, more or less, upon which said joint taxable income there was owing to the United States of America an income tax of \$237,172, more or less.

The above offense was in violation of Title 26, United States Code, Section 7201.

IV.

FORFEITURE

1. The allegations in counts 1 through 17 of this indictment are realleged as if fully set forth here, for the purpose of alleging forfeiture, pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(1), 1956(c)(7)(A), 1961(1), and Title 28, United States Code, Section 2461(c).

2. Pursuant to Title 18, United States Code, Section 981 and Federal Rule of Criminal Procedure 32.2, if convicted of one or more of the offenses set forth in Counts 1 through 13,

DAVID HEATH SWANSON shall forfeit to the United States:

- a. any property, real or personal, constituting or derived from proceeds the defendant obtained as the result of each of the offenses set forth in Counts 1 through 13 of which the defendant is convicted; or
- b. a sum of money equal to the total amount of the proceeds the defendant obtained as the result of each of the offenses set forth in Counts 1 through 13 of which the defendant is convicted.

3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), the court shall order the forfeiture of any other property

of the defendant, up to the value of any property described in paragraph 2, if, by any act or omission of the defendant, the property described in paragraph 2, or any portion thereof:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty.

In keeping with the foregoing, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of all forfeitable property as described above in Paragraph 2.

4. Pursuant to Title 18, United States Code, Section 982 and Federal Rule of Criminal Procedure 32.2, if convicted of one or more of the offenses set forth in Counts 14 through 17,

DAVID HEATH SWANSON shall forfeit to the United States:

- a. any property, real or personal, involved in each of the offenses set forth in Counts 14 through 17 of which the defendant is convicted, or any property traceable to such property; or
- b. a sum of money equal to the total value of the property involved in each of the offenses set forth in Counts 14 through 17 of which the defendant is convicted.

5. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in paragraph 4, if, by any act or omission of the defendant, the property described in paragraph 4, or any portion thereof:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or

- e. has been commingled with other property which cannot be divided without difficulty.

In keeping with the foregoing, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of all forfeitable property as described above in Paragraph 4.

A TRUE BILL:

FOREPERSON

SUSAN W. BROOKS
United States Attorney

by:

Charles Goodloe, Jr.
Assistant United States Attorney